

House Bill 1051

By: Representative Butler of the 18th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, so as to authorize the imposition of a homestead option sales and use tax for educational purposes; to establish special districts; to provide for definitions, procedures, conditions, and limitations for the imposition, collection, disbursement, and termination of the tax; to provide for powers, duties, and authority of the state revenue commissioner; to provide for related matters; to provide for a contingent effective date; to provide for applicability; to provide for automatic repeal under certain circumstances; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use taxes, is amended by adding a new article to read as follows:

"ARTICLE 5

48-8-230.

This article shall be known and may be cited as the 'Homestead Option Sales and Use Tax for Educational Purposes Act.'

48-8-231.

As used in this article, the term:

(1) 'Ad valorem taxes for educational purposes' means any and all ad valorem taxes for school district or independent school district purposes levied by, for, or on behalf of the county, excluding taxes to retire general obligation bonded indebtedness of the county.

(2) 'Board of education' means the governing body of a county school district or an independent school district.

(3) 'Homestead' means homestead as defined and qualified in Code Section 48-5-40.

48-8-232.

(a) Pursuant to the authority granted by Article VIII, Section VI, Paragraph V and Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state education special districts. The geographical boundary of each county school district shall correspond with and shall be conterminous with the geographical boundary of one of the special districts, and the geographic boundary of each independent school district shall correspond with and shall be conterminous with the geographic boundary of one of the special districts.

(b) When the imposition of a local sales and use tax is authorized according to the procedures provided in this article within a special district, the board of education whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and use tax levied pursuant to this article, except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.1) of Code Section 48-8-2 and shall be applicable to the sale of food and beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.

(c) The proceeds of the sales and use tax levied and collected under this article shall be used only for the purpose of funding the homestead exemption as provided in Code Section 48-8-233.

(d) Such sales and use tax shall only be levied in a special district following the enactment of a local Act which provides for a homestead exemption of an amount to be determined from the amount of sales and use tax collected under this article. Any such local Act shall incorporate by reference the terms and conditions specified under this article. Any such homestead exemption under this article shall be in addition to and not in lieu of any other homestead exemption applicable to school district taxes for educational purposes within the special district. Notwithstanding any provision of such local Act to the contrary, the referendum which shall otherwise be required to be conducted under such local Act shall only be conducted if the resolution required under subsection (a) of Code Section 48-8-232 is adopted prior to the issuance of the call for the referendum under the local Act by the election superintendent. If such ordinance is not adopted by that date, the referendum otherwise required to be conducted under the local Act shall not be conducted.

48-8-233.

(a) Whenever the board of education in a special district wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by Code Section 48-8-232 shall be imposed, any such board of education shall notify the election superintendent of the political subdivision whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the political subdivision calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall only be conducted on the date of and in conjunction with a referendum provided for by local Act on the question of whether to impose a homestead exemption within such county or independent school district and based on the amount of proceeds from the sales and use tax levied and collected pursuant to this article. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following statement which shall precede the ballot question specified in this subsection and the ballot question specified by the required local Act:

'NOTICE TO ELECTORS: Unless **BOTH** the homestead exemption **AND** the retail homestead option sales and use tax are approved, then neither the exemption nor the sales and use tax shall become effective.'

Such statement shall be followed by the following:

'() YES Shall a retail homestead option sales and use tax for educational purposes of 1 percent be levied within the special district within
() NO _____ (County) (the City of _____) for the
purposes of funding a homestead exemption of up to 100 percent of the
assessed value of homesteads from school district taxes for educational
purposes?'

Notwithstanding any other provision of law to the contrary, the statement, ballot question, and local Act ballot question referred to in this subsection shall precede any and all other ballot questions calling for the levy or imposition of any other sales and use tax which are to appear on the same ballot.

(b) All persons desiring to vote in favor of levying the sales and use tax shall vote 'Yes,' and all persons opposed to levying the tax shall vote 'No.' If more than one-half of the votes cast are in favor of levying the tax and approving the local Act providing such homestead

exemption, then the tax shall be levied in accordance with this article; otherwise, the sales and use tax may not be levied, and the question of the imposition of the sales and use tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the board of education whose geographical boundary is conterminous with that of the special district holding the election.

(c) If the imposition of the sales and use tax provided in Code Section 48-8-232 is approved in a referendum election as provided by subsections (a) and (b) of this Code section, the board of education of the special district shall adopt a resolution during the first 30 days following the certification of the result of the election imposing the sales and use tax authorized by Code Section 48-8-232 in the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are billed on a regular monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption.

48-8-234.

(a) The sales and use tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the special district in which the tax is levied. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.1) of Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

(b) Each sales and use tax return remitting sales and use taxes collected under this article shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this article are collected and distributed according to situs of sale.

(c) The proceeds of the sales and use tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;

(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the sales and use tax shall be distributed to the board of education of the special district and shall be expended solely for the purpose of funding the homestead exemption.

48-8-235.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within the state or in a tax jurisdiction outside the state, the sales and use tax may be credited against the sales and use tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the sales and use tax imposed under this article for tax paid in another jurisdiction if the sales and use tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and sales and use taxes so paid in another jurisdiction shall be credited first against the sales and use tax levied under this article and then against the sales and use tax levied under Article 3 of this chapter, if applicable.

48-8-236.

(a) Whenever the board of education in the special district in which the sales and use tax authorized by this article is being levied wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by Code Section 48-8-232

shall be discontinued, the board of education shall notify the election superintendent of the political subdivision whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the board of education calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall only be conducted on the date of and in conjunction with a referendum provided for by local Act on the question of whether to repeal the homestead exemption within such county school district or independent school district which is funded from the proceeds of the sales and use tax levied and collected pursuant to this article. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

'() YES Shall the 1 percent retail homestead option sales and use tax being levied within the special district within _____ (County) (City of () NO _____) for the purposes of funding an additional homestead exemption of up to 100 percent of the assessed value of homesteads from school district taxes for county educational be terminated?'

(b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote 'Yes,' and all persons opposed to discontinuing the tax shall vote 'No.' If more than one-half of the votes cast are in favor of discontinuing the sales and use tax and repealing the local Act providing for such homestead exemption, then the sales and use tax shall cease to be levied on the last day of the taxable year following the taxable year in which the commissioner receives the certification of the result of the election; otherwise, the sales and use tax shall continue to be levied, and the question of the discontinuing of the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

48-8-237.

No sales and use tax provided for in Code Section 48-8-232 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the sales and use tax is imposed under this article regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Interstate Commerce Commission or the Georgia Public Service Commission.

48-8-238.

(a) As used in this Code section, the term 'building and construction materials' means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No sales and use tax provided for in Code Section 48-8-232 shall be imposed in such special district upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the sales and use tax by the county whose geographical boundary is conterminous with that of the special district and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the sales and use tax.

48-8-239.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the sales and use tax authorized to be imposed by this article."

SECTION 2.

This Act shall become effective on January 1, 2011; provided, however, that this Act shall only become effective on January 1, 2011, upon the ratification of a resolution at the November, 2010, state-wide general election, which resolution amends the Constitution of the State of Georgia so as to authorize a board of education to levy a homestead option sales and use tax for educational purposes. If such resolution is not ratified, this Act shall not become effective and shall stand repealed in its entirety on January 1, 2011.

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SECTION 3.

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All laws and parts of laws in conflict with this Act are repealed.